IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.

CWP No. 244 of 2006.

Date of Decision: **May 17, 2006**.

Duni Chand Dhiman .....Petitioner.

Versus

State of Himachal Pradesh and another ……Respondents.

Coram

The Hon'ble Mr. Justice V.K. Gupta, Chief Justice.
The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?[1]

For the Petitioner: Mr. B.C. Negi, Advocate.

For the Respondent: Mr. M.S. Chandel, Advocate General with Mr. J.K. Verma, Deputy Advocate General.

V.K. Gupta, C.J. (Oral):

Reply has been filed.

With the consent of the learned counsel for the parties, the Writ Petition is taken up for final disposal today itself without formally admitting it.

Heard. The petitioner has been placed under suspension under Section 145 of the H.P. Panchayati Raj Act, 1994 (for short: the Act). The

[1] Whether Reporters of Local Papers may be allowed to see the judgment?

suspension order as well as the notice preceding suspension order clearly stated that the petitioner is being placed under suspension in terms of sub-section (2) of Section 145 of the Act. Even during the course of hearing of the case today, Mr. Chandel, learned Advocate General appearing for the respondents specifically stated before us that the suspension order was passed in terms of sub-section (2) of Section 145 of the Act.

Sub-section(2) (supra), *inter-alia*, provides that the prescribed Authority may suspend an office bearer of a Panchayat where the inspection or an audit report discloses the misappropriation, misutilization or embezzlement of Panchayat funds by such an office bearer and the prescribed Authority is satisfied that continuance in office of such a person will prejudice the enquiry under Section 146 and that the prescribed Authority apprehends tampering of record and witnesses by such an office bearer.

Sub-section (2) is reproduced hereunder for ready reference. It reads thus:-

> " (2) Where the inspection or an audit report discloses the misappropriation, misutilization or embezzlement of Panchayat funds by an office bearer of a Panchayat and the prescribed authority is satisfied that continuance in office of such a person will prejudice the enquiry under section 146 and apprehends tampering with record and witnesses, may suspend such a person and in case he is in possession of any record, money or any property of the Panchayat, order him to handover such records, money or property to the Secretary of the Panchayat."

A perusal of the show cause notice as well as the impugned suspension order clearly suggests and reveals that the prescribed Authority has not at all recorded its satisfaction in any manner about the

aforesaid twin requirements of law, viz. that the continuance in office of the petitioner (as an office bearer of the Panchayat) will prejudice the enquiry under Section 146 of the Act and that the prescribed Authority also apprehends that the petitioner may tamper with the record and the witnesses. Recording of the satisfaction in the aforesaid terms in the suspension Order itself as also in the show cause notice preceding the same is a *sine qua non* to the passing of the suspension order under sub-section (2) of Section 145 of the Act and this admittedly not having been done in the present case, the suspension order suffers from a patent error of law on the face of it. On this ground alone, it deserves to be quashed and set aside.

The Writ Petition is allowed. The impugned suspension order is quashed and set aside with all consequences.

CMPs No. 367, 368 and 369 of 2006.

In view of the order passed in the main case, no order on these applications and the same shall stand disposed of.

(V.K. Gupta), C.J.

May 17, 2006. **(Deepak Gupta), J.**
(rks)